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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-357

J. L. SIMMONS COMPANY,

Petitioner,

vs.

LOCAL 742, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,

Respondent,

and

NATIONAL LABOR RELATIONS BOARD

RESPONDENT'S OPPOSITION TO THE MOTION OF THE UNITED STATES CHAMBER OF COMMERCE FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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KEENAN PRINTING COMPANY 368

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Respondent, Local 742, United Brotherhood of Carpenters and Joiners of America ("Carpenters") by its attorney, Bernard M. Mamet, in opposition to the motion of the United States Chamber of Commerce for leave to file an *amicus curiae* brief in support of the Petition for writ of certiorari respectfully states as follows:

1. The last day within which to seek certiorari was July 6, 1971 and following the granting of an extension, the Petition for writ of certiorari was filed on September 3, 1971. Respondent received a copy of same on September 7, 1971. Now, on October 4, 1971, a month after the filing of the Petition, the Respondent was served with the instant motion for leave to file an *amicus curiae* brief in support of the Petition. Rule 42 of this Court's Rules clearly requires that such a motion be submitted within "a reasonable time prior to the consideration of the . . . petition for writ of certiorari." The Carpenters response to the Petition was originally due October 7, 1971 and although a timely request has been made for an extension to October 25, 1971, if the *amicus* brief is accepted, a portion of the Response already at the printer will have to be rewritten and supplemented to at least acknowledge the *amicus* brief and clarify some of its histrionically confusing statements. Obviously, the "reasonable time" requirement of Rule 42 was designed to prevent a last minute filing such as occurred here.

2. The Chamber of Commerce's motion, apart from stating that it is the Chamber of Commerce and has appeared as *amicus curiae* in other cases involving other issues, sets forth no facts or questions of law which have not been presented in the Petition nor does it set forth any issue which it believes to be relevant to this proceeding which cannot be adequately presented by the parties as required by Rule 42.

3. This case does not involve pressures brought upon neutrals but rather concerns itself with a factual determination as to whether or not the Union's objective was one of work preservation for the benefit of the employees of the employer with whom the Union had a collective

bargaining agreement (and hence primary and legal) or whether the Union sought to cause the employer of its members to cease doing business with a neutral because of a dispute the Union had with a neutral as distinguished from the employer of the employees (and hence secondary and illegal). The resolution of this question involves the finding of specific facts and the drawing of inferences from all of the surrounding circumstances. This was done by the Trial Examiner who found that the Union was engaged in primary lawful activity of work preservation. The Board reversed relying solely upon the automatic imposition of its *per se* "right to control" doctrine. The District of Columbia Circuit, as all other Circuits, refused to permit the automatic imposition of arbitrary concepts and remanded to the Board, directing it to consider all surrounding circumstances based upon the facts found by the Trial Examiner. The motion of the Chamber of Commerce is a document more properly directed to a legislative body than to this Court. It through invective, in essence, merely claims that peaceful work preservation activity directed against the employees of the primary employer should be prohibited.

4. The permitting of the Chamber of Commerce to file an *amicus* brief can only confuse the issues and impose upon this Court particularly since a private party seeks certiorari and not the Solicitor General of the United States in behalf of the National Labor Relations Board.

WHEREFORE, for the foregoing reasons we respectfully request that the United States Chamber of Commerce motion for leave to file an *amicus curiae* brief be denied.

Respectfully submitted,

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October 11, 1971
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